IN THE HIGH COURT OF JUDICATURE OF BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO. 257 of 2007

IN

WRIT PETITION NO. 1136 OF 2006

H.R.B.H. Siddiqui .. Appellant

versus

Brihan Mumbai Electric Supply and

Transport Undertaking & Anr. .. Respondents

...

Ms.Rohini M. Dandekar i/b Borawalla & Co. for the appellant.

Ms.Priya P. Borgaonkar i/b M.V. Kini & Co. for the respondent.

CORAM : R.M.S. KHANDEPARKAR

AND D.G.KARNIK, JJ

DATED : 9th April 2007.

P.C.:

1. Heard.

2. The present appeal arises from order dated 19th January 2007 passed in Writ Petition no.1136 of 2006. By the impugned order, the Writ Petition filed on behalf of the workman appellant has been dismissed whilst allowing the Writ Petition filed by the Management respondent and thereby has set aside the order of the Industrial Court dated 1st December 2005 in Appeal(IC) No.47 of 2005 to the extent to which it had granted reinstatement of the appellant with 30% backwages.

3. Consequent to the enquiry held against the appellant, he was found guilty of misconduct and punishment of dismissal was imposed upon him which was sought to be challenged before the Labour Court. By judgement dated 28th October 2004, the labour court held that the findings of the Enquiry Officer were not proper and consequently order of dismissal was illegal and improper and therefore directed reinstatement of the workmen with 30% backwages and continuity in service. The matter was carried in appeal by the management under Appeal (IC) no.47 of 2005 wherein the Industrial Court did not set aside

the order passed by the Labour Court directing reinstatement with 30% backwages, held that the findings of the enquiry officer were not illegal nor perverse and the misconduct was established but the punishment was disproportionate to the proved misconduct. It was held that the appellant workman was not liable to be dismissed from the service as that would amount to disproportionate punishment to the proved misconduct. The matter was carried in Writ Petition by both the parties. Both the Writ Petitions were disposed of by the impugned order dated 19th January 2007.

4. While challenging the impugned order, it is sought to be contended that since the incident occurred on the bus-stop, it could not be said to be part of the premises of the respondent corporation nor it can be said to be the place of employment, in view of the definitions of those terms under the Standing Order nos.3(g) and 3(h). Standing Order 3(g) defines the term "place of employment" to mean and include any place where any employee in the employment of the undertaking may be working for the undertaking at any time and includes any factory, workshop premises belonging to the undertaking,

whereas the Standing Order 3(h) defines the term "premises" of the undertaking to mean and include the place of the employment and all landed property built or unbuilt, belonging to the undertaking together with the accessories, open space, garden etc. thereto attached but not to include residential quarters and tenements occupied by the employee on the rent and their attached compounds.

5. Plain reading of the said definitions would disclose that the definitions are wide in nature The term "premises" specifically enumerates the premises which are to be excluded from the said definition. The bus-stops of the corporation have not been excluded therefore. Obviously, the place which is used as bus-stop would include the premises of the undertaking which is a bus transport company. Attention was drawn to paragraph no.11 of the order of the Labour Court to contend that neither there was evidence of assault nor the incident occurred in the premises of the undertaking. This aspect was considered in detail by the Industrial court in its judgement wherein it has been clearly observed that after the incident of assault, Mr.Diwate had immediately contacted the police and lodged a report

upon which non cognizable offence was registered and he was referred to the medical check up and medical certificate was also produced during the enquiry wherein the history was given as of assault with fist blows which occurred at 11.25 p.m. on clinical examination mild swelling with the dimensions of 1/4’ x 1/4" c.m was found on the left eye. The copy of the NC report was also produced and found on record. Further, the statement of security guard Mr.Suresh Nimaz was also considered by the Industrial Court for showing that he had seen Mr.Diwate was being assaulted and assailant had run away. Considering the other evidence on record which was also believed by the Industrial Court which corroborated the case put forth by Mr.Diwate, the Industrial Court has arrived at a finding that the incident of assault was proved and the enquiry was just and fair. Being so, no credence can be given to the observations made by the Labour Court in paragraph no.11 which neither appears to be borne out from the record nor does it show that the findings have been arrived at on proper analysis of the evidence on record. In any case, it is not open for this Court to reassess the evidence once the Industrial Court having found that the Labour Court had totally ignored the relevant

materials evidence and therefore, had found it proper to reappreciate the evidence and on such re-appreciation had found the misconduct having been proved.

6. The only point which is to be considered is whether the Industrial Court is justified in holding that the punishment of dismissal was disproportionate to the misconduct. Once the misconduct is of the nature of an act of assault on the co-worker and as it inapparent from the records that the assailant had assaulted Mr.Diwate on account of the latter having deposed against the assailant, the punishment of dismissal imposed on such workman can by no stretch of imagination be said to be disproportionate to the proved misconduct. In any case, it is well settled that once the management imposes the punishment on the basis of the proved misconduct, the Courts are not to interfere in the discretion of the management in that regard except for the reasons to be recorded the punishment is proved to be totally disproportionate to the proved misconduct. Once the misconduct is committed by the appellant workman, which is found to be in the nature of assault on the

fellow workman and that too without any justification, no fault could be found with the management imposing the punishment of dismissal from service.

7. The Labour Court as well as Industrial Court therefore clearly erred in interfering with the order of dismissal. No fault can be found with the impugned order. For the reasons stated above, we do not find any case for interference. Appeal therefore fails and is hereby dismissed.

(R.M.S. KHANDEPARKAR, J)

(D.G. KARNIK, J)